
OLR Bill Analysis

SB 33

AN ACT CONCERNING DEPARTMENT OF TRANSPORTATION PROJECT DELIVERY.

SUMMARY:

This bill authorizes the transportation commissioner to designate that highway construction and maintenance projects be built using either a (1) “construction-manager-at-risk” contract with a guaranteed maximum price or (2) design-build contract, as alternatives to the department’s traditional “design-bid-build” process. It prescribes how he must do this. In practice, only contractors the Department of Transportation (DOT) has prequalified are eligible to be awarded DOT construction contracts (see BACKGROUND). The bill authorizes the alternative selection processes but does not refer to prequalification.

EFFECTIVE DATE: Upon passage

DIFFERENT BIDDING METHODS

“Design-bid-build,” “construction-manager-at-risk,” and “design-build” use different approaches to design and build construction projects. The methods chiefly differ in how they assign responsibility for design and construction services.

1. In design-bid-build, the most traditional method, the owner has separate contracts with the designer and the builder, and the project design is completed before bids are solicited for a construction contract.
2. In construction-manager-at-risk (CMAR), the owner generally contracts with a single construction manager, who works with the designer and then provides labor, materials, and project management during construction. The CMAR method typically guarantees the maximum cost of the work.

3. In the design-build approach, the owner contracts with a single entity that both designs and builds the project.

DOT has traditionally put highway projects out to bid under the “design-bid-build” method, and current law does not authorize it to use the other methods. The bill allows the commissioner to designate specific highway construction projects to be put to bid under either a CMAR or design-build contract.

CMAR CONTRACT PROCEDURE

Under the bill, the commissioner may enter into one contract with an architect or engineer for the project design, and a second contract with a CMAR contractor. The CMAR contractor is responsible for (1) providing input during the design process and (2) building the project, using a low sealed bid process to select trade subcontractors. It is not clear if the CMAR contractor must select the lowest responsible bidder (see BACKGROUND). The CMAR contract must include a guaranteed maximum price.

The bill allows the commissioner to select the architect, engineer, or contractor from among the contractors selected and recommended by a selection panel. It is not clear if the selection panel selects and recommends architects and engineers or just contractors. The bill also does not discuss panel membership or how it is appointed, although current law establishes within DOT at least one panel to evaluate and select DOT consultants (CGS § 13b-20c).

The CMAR contract must be based on competitive proposals received by the commissioner after he has advertised the project at least once in a newspaper with a substantial circulation in the project area. The commissioner must establish the criteria, requirements, and conditions of the proposals and the award. He must award the contract based on the general conditions and staff costs, plus qualitative criteria. It is not clear to what “general conditions” and “staff costs” refer. The bill makes the commissioner solely responsible for other aspects of the project, but does not specify what these might be.

The contract must clearly state (1) the contractor’s responsibilities to deliver a completed and acceptable project on a particular date; (2) the

project's maximum cost; and (3) if applicable, the cost of acquiring the property as a separate item.

DESIGN BUILD CONTRACT

Under this alternative, the bill allows the commissioner to enter into a single contract with a design-builder, whom he may select from among those a selection panel recommends. The commissioner must advertise the project and its specifications at least once in a newspaper with a substantial circulation in the project area;

The contract must (1) include such project elements as site acquisition, permitting, engineering design, and construction and (2) be based on competitive proposals. The commissioner must award the contract based on a predetermined "metric" provided to design-builders before they develop technical proposals. This metric may be unique to a project, but must consist of a score combining the (1) proposer's qualifications and past performance, (2) proposal's technical merit, and (3) project cost. The commissioner must establish a selection panel for each project to score the first two elements according to the applicable metric. The proposal's sealed cost portion must be opened in a public ceremony only after this scoring has taken place.

As with the CMAR process, the commissioner must determine all criteria, requirements, and conditions for the proposals and award, and is solely responsible for other aspects of the contract. Also, as with the CMAR process, the contract must clearly state (1) the design builder's responsibility to deliver a complete and acceptable project on a particular date; (2) the project's maximum cost; and (3) if applicable as a separate item, the cost of acquiring the property.

BACKGROUND

Lowest Responsible Bidder

By law, the DOT commissioner must award contracts to build, alter, reconstruct, improve, relocate, widen, or change the grade of, sections of state highways or bridges to the lowest bidder deemed responsible (CGS § 13a-95).

Prequalification

DOT's *Construction Contract Bidding and Award Manual* states that "with few exceptions, only contractors prequalified by the department are eligible to receive awards of department construction contracts." Prequalification is the process by which the department determines which general contractors are qualified and eligible for different types of DOT contracts.

COMMITTEE ACTION

Transportation Committee

Joint Favorable

Yea 37 Nay 0 (03/14/2012)